

Oil and natural gas in the occupied Syrian Golan

Illegal exploitation by Israel as occupying power

M. Linares.

Introduction

- During the Israeli-Arab war of 1967, Israel captured 70% of the Syrian Golan and 130.000 of the native inhabitants were forcibly transferred ¹. In 1981 Israel illegally annexed the occupied Golan and since that moment Israel has considered itself as "sovereign" over that territory, although the International Community considered this annexation void and null and has never accepted it. ²

- Nowadays there are five villages inhabited by native Syrian people, all of them are in the north and the number of indigenous Syrian people remaining in the Golan stands at 20000. ³ On the other hand, there are more than 20000 Jewish settlers in the Occupied Syrian Golan, ⁴ and in order to accommodate those 33 illegal settlements have been built within the region. ⁵ The Israeli settlements are mainly in the south and the most important and biggest one is Qatzrin. ⁶ Approximately only 6% of the occupied territory remains under the indigenous Syrian population control, the rest has been expropriated for military use or for settlements. ⁷

- According to the Law of Occupation, Israel being the occupying country, has the legal obligation to act as just administrator of public property and natural resources. ⁸ Nevertheless, at the beginning of 2013 Israel's Energy and Water Resources Ministry granted Genie Energy, an American-Israeli company, an exclusive licence to explore for oil and gas in a 153-square miles radius in the southern part of the Golan. ⁹ This action violates international law and therefore it is illegal.

¹ DMC International Displaced Monitoring Centre 2007 "Syria: Forty Year On, People Displaced From The Golan Remain in Waiting". See [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/11354A3BE8240C12573850037B6C6/\\$file/Syria_IDPs_Overview_Oct07.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/11354A3BE8240C12573850037B6C6/$file/Syria_IDPs_Overview_Oct07.pdf).

² UN Security Council Resolution 479, 1981. See <http://unispal.un.org/UNISPAL.NSF/0/73D6B4C70D1A92B7852560DF0064F101>

³ Foundation for Middle East Peace. Report 22, n 6. "Table: Settlements in the Golan Heights, 2012". 2012. See <http://www.fmep.org/reports/archive/vol.-22/no.-6/settlements-in-the-golan-heights-2012>

⁴ Ibidem p 3.

⁵ Ibidem p 2.

⁶ Qatzrin town website. "Qatzrin, The Capital of the Golan Heights" <http://www.qatzrin.muni.il/929/>

⁷ Jawlan ONG. "The Syrian Golan Heights Under the Israel Occupation." <http://jawlan.org/english/golanheights.htm>

⁸ N.F. Lancaster, 'Occupation Law, Sovereignty, and Political Transformation: Should the Hague Regulations and the Fourth Geneva Convention Still Be Considered Customary International Law?', (2006) 189 Military Law Review, p. 51.

K. Cavanaugh, 'The Israeli Military Court System in the West Bank and Gaza, 12(2) Journal of Conflict and Security Law (2007), pp. 197-222.

⁹ Business Insider Australia. Israel Grants First Golan Heights Oil Drilling Licence to Dick Cheney-Linked Company. February 23rd 2013. See <http://www.businessinsider.com.au/israel-grants-golan-heights-oil-license-2013-2>

The Telegraph. Israel approves oil drilling in Golan Heights. February 21st 2013. See <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/9885862/Israel-approves-oil-drilling-in-Golan-Heights.html>

Israel and Natural resources in the occupied Syrian Golan

Oil Exploration

- On December 21st 1981, Israel illegally annexed the Golan and extended Israeli law to that area.¹⁰ One of these laws was the Israeli Petroleum Law that governs the exploration and production of gas and oil in Israel.¹¹ Under this norm, the minister in charge is authorized, in consultation with the advisory Petroleum Commission, to open or close certain regions for exploratory drilling.¹²

- In the early 1990's, the Israeli Energy Ministry granted the Israel Oil Company a permit for exploratory drillings in the Golan. However, following the overtures for peace negotiations between Israel and Syria, the permit was suspended.¹³ In 1996, prime minister Benjamin Netanyahu granted preliminary approval to the Israeli National Oil Company to proceed with oil exploration drilling in the Golan,¹⁴ nevertheless the drilling never went forward insofar as the Syrian government rushed to denounce the move.¹⁵

- In 2012, National Infrastructure Minister Uzi Landau secretly approved exploratory drilling for oil and natural gas in the Golan.¹⁶ In 2013, the Petroleum Council of Israel's Ministry of Energy and Water Resources granted Genie Energy Ltd a drilling license covering 153-square miles radius in the southern part of the Golan.¹⁷ The region concerned is half the area of the occupied Golan and goes from the settlement of Katzrin to Tzemach in the south.¹⁸ Israeli goal is to have up to 10 major drilling rigs pumping by next year.¹⁹

- Some analysts have linked the timing of the licence grant to the ongoing armed conflict in Syria. Yaron Ezrahi, an Israeli political analyst, said: "this action is mostly political – it's an attempt to deepen Israeli commitment to the occupied Golan. The timing is directly related to the fact that the Syrian government is dealing with violence and chaos and is not free to deal with this problem."²⁰

¹⁰ Golan Heights Law. December 14th 1981. <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/golan%20heights%20law.aspx>

¹¹ The Israeli Petroleum Law, 5712-1952, was enacted in 1952 and underwent revision in 1965.

¹² Ibidem p 11.

¹³ Al-Monitor. "Israel Quietly Searching for Oil in the Golan Heights." April 2012. See <http://www.al-monitor.com/pulse/ar/contents/articles/politics/2012/05/secret-decision-israel-to-drill.html>

¹⁴ Associated Press. "Netanyahu Approves Oil Drilling In Golan Heights". October 25th 1996.

¹⁵ Ibidem p 13.

¹⁶ The Times of Israel. "Government secretly approves Golan Heights drilling." The Times of Israel. May 13rd 2012.

¹⁷ JTA. N.J. Firms wins original rights to drill in Golan Heights. February 21st 2013. See <http://www.jta.org/2013/02/21/news-opinion/united-states/n-j-firm-wins-original-rights-to-drill-in-golan-heights>

¹⁸ Caabu, Advancing Arab-Brithis Relations. Press Release: Caaby calls on Brithis government to oppose Israeli oil and gas exploitation in the Golan Heights. February 28th 2013. See <http://www.caabu.org/news/news/press-release-caabu-calls-british-government-oppose-israeli-oil-and-gas-exploration-golan->

¹⁹ Before it's News. "Israel Prepares to Drill for Oil in Occupied Golan." September 26th 2013. See <http://beforeitsnews.com/eu/2013/09/israel-prepares-to-drill-for-oil-in-occupied-golan-2535888.html>

²⁰ Financial Times. "Israel grants Golan exploration licence." February 21st 2013. See <http://www.ft.com/intl/cms/s/0/471a183a-7c28-11e2-bf52-00144feabdc0.html?siteedition=intl#axzz216g2t438>

Water and other natural resources

- After the occupation, Israeli authorities initiated a programme to gain access to the aquifers of the Golan and subsequently exploit the ground water. In 1984 the Allone HaBashan 2 well was the first one to produce a significant amount of water and since then more deep well have been created.²¹ Nowadays the amount of ground water extracted by the Israeli authorities from these wells exceeds 10 million m³ of water a year.²²
- With the illegal annexation of the Golan in 1981 the water laws of Israel were forced in the Golan. According to these laws the private ownership of water is prohibited and all water resources within the Golan is under Israeli state administrations.²³ All the natural springs and river in the Golan are under the control of the Israeli authorities and native inhabitants of the Golan are forced to purchase the water for irrigating their farms from the Israeli government.²⁴ Moreover, any private operation involving the use of a water source requires a license issued by the Water Authority,²⁵ this includes the construction of tanks to catch the rain water.²⁶
- In January 2012, Israel took another step to advance its illegal sovereignty over the occupied Syrian Golan. The District Council for Planning and Construction approved the construction of a 400-dunam (roughly 99 acres) wind farm to produce green energy. The farm would be constructed by kinetic energy companies.²⁷

International law

Law of occupation

- When a territory comes under the effective control of the Occupying Power, the law of occupation is applicable.²⁸ The relevant provisions of the law of occupation are enshrined in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and in the 1907 Hague Regulations (Hague Regulations). Only the first treaty has been ratified by Israel authorities. However, the Hague Regulations codifies rules that are “recognized by all civilized nations (and are) regarded as being declaratory of the laws and customs of war.”²⁹ These rules are part of the international customary law and, therefore, binding on all states,

²¹ E. Dafny, H. Gvirtzman, A. Burg and L. Fleischer. “The Hydrology of the Golan Basalt Aquifer, Israel”. Israel Journal of Earth Science, Vol. 52, November 2003. P 142.

²² Ibidem p 21.

²³ Water Law. Israel's Water Economy, Ministry of National Infrastructures, The Water Commission,. August 2002. See www.mfa.gov.il/MFA/MFAArchive/2000_20098/2002//Israel-s%20Water%20Economy%20-%20Thinking%20of%20future%20genera#laws

²⁴ Kathy Keary. “Water is Live: A Consideration of the Legality and Consequences of Israel Exploitation of the Water Resources of the Occupied Syrian Golan”. Al – Marsad, Arab Human Rights Centre on Golan Heights. 2013. P 41.

²⁵ Ibidem p 24. P 47.

²⁶ Ibidem p 24. P 54.

²⁷ Al-Monitor. “Bad Timing: Israel Allows Oil Exploration in Golan Heights.” February 2013. See <http://www.al-monitor.com/pulse/originals/2013/02/more-bad-timing-from-israel.html>

²⁸ International Court of Justice. Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda, 19 December 2005, paras. 167-180.

²⁹ International Military Tribunal at Nuremberg. Trial of the Major War Criminals Before the International Military Tribunal 253-54. 6 F.R.D. 69, 130. 1946.

including those such as Israel that have not ratified the Hague Convention No IV of 1907.³⁰

- Article 42 of the Hague Regulations provides that a “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”³¹ The International Criminal Tribunal for the Former Yugoslavia (ICTY) has outlined the following guidelines to determine whether the authority of the Occupying Power has actually been established³²:

1. The Occupying Power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly. In the case of the Golan, since 1967 Syrian authority has been ineffective and Israel has had effective control over the territory.
2. The enemy’s forces have surrendered, been defeated or withdrawn. Sporadic local resistance, even successful, does not affect the reality of occupation. Syrian forces in the Golan were defeated during the 1967 War and since that time there has not been any significant military resistance.³³
3. The Occupying Power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the Occupying Power felt. Israel has training facilities and camps all over the Occupied Golan.
4. A temporary administration has been established over the territory. From 1967 to 1981 Israelis military commanders in the Golan had legislative authority to administer the territory. In 1981 this regime was replaced by the Golan Heights Law.
5. The Occupying Power has issued and enforced directions to the civilian population. Israel authorities have enforced directions to the civilians since the beginning of the occupation in 1967.

- If we apply to the Syrian Golan the five requirements stated by the ICTY to establish if a territory is occupied, it is clear that the Golan has been occupied since 1967.

1. Since 1967 Syrian authority has been ineffective in the Golan and Israel has had effective control over the territory.
2. Syrian forces in the Golan were defeated during the 1967 War and since that time there has not been any significant military resistance.
3. Israel has training facilities and camps all over the Occupied Golan.
4. From 1967 to 1981 Israelis military commanders in the Golan had legislative authority to administer the territory. In 1981 this regime was replaced by the Golan Heights Law.
5. Israel authorities have enforced directions to the civilians since the beginning of the occupation in 1967.

- Israel rejects the notion that the Syrian Golan is still an occupied territory since it claims sovereignty over the region due to the imposition of the Golan Heights Law of 1981, which purported to annex the territory. The Golan Heights Law is a violation of Article 2(4) of the United Nations Charter³⁴ and the principle of customary international law prohibiting the acquisition of

³⁰ B. M. Clagett and O. T. Johnson Jr. “May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?” *The American Journal of International Law* Vol. 72, No 3 (July 1978). Pp 558-585.

³¹ 1907 Hague Regulations annexed to Convention IV Respecting the Laws and Customs of War on Land, signed at the Hague. October 18th 1907.

³² International Criminal Tribunal for the Former Yugoslavia. *Prosecutor v. Naletilic and Martinovic*. Case No. IT-98-34-T. March 31st 2003, para. 217.

³³ C. Herzog, “The Arab Israeli Wars, Arms and Armour Press”. London. 1982. Pp. 285-306.

³⁴ UN Charter. Article 2(4). “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.”

territory by threat or use of force.³⁵ The main pillar of the law of belligerent occupation is “embedded in the maxim that the occupation does not affect sovereignty (...) Undeniably, divested of possession, at least temporarily, the title of the territorial sovereign is considerably weakened and reduced to a naked title. Nevertheless, the sovereignty of the displaced sovereign over the occupied territory is not terminated. Indeed, it is not even suspended.”³⁶ In this sense, the resolution 479/1981 of the United Nations Security Council categorically refuses to accept the annexation of the Syrian Golan. The Security Council reaffirmed that “the acquisition of territory by force is inadmissible, in accordance with the United Nations Charter, the principles of international law, and relevant Security Council resolutions”.³⁷ The Security Council went on to declare that “the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan is null and void and without international legal effect”.³⁸

Natural resources under the law of occupation

- Under the law of occupation, occupation is considered a temporary condition, and the occupying power has the legal obligation to act as administrator of public property, and to keep in force the existing laws and form of government and penal system in the occupied region.³⁹ The occupying army is only exercising a de facto authority over the occupied state and it does not gain territorial sovereignty over the occupied territory.⁴⁰ In exercising its powers the occupier must comply with two important requirements: the fulfilment of its own military necessity and respect for the interests of the local population.⁴¹ Any changes or actions taken by the occupying authorities in the occupied territory must serve one of these two interests and under no circumstances can the occupier or its population profit from the occupation.⁴²

- Properties under occupation are divided into private property and public property, which generally includes State property.⁴³ Further, properties in each of those categories can then be classified as movable property and immovable property.⁴⁴ In relation with the natural resources, it is clear they are public property but the scholars do not agree to classify them as movable or immovable property, specially in relation with the exploitation of oil. Some scholars have argued that oil is a movable property.⁴⁵ However, most commentators consider that natural resources which are not renewable but finite, such as minerals and hydrocarbons, cannot be considered as ‘fruits,’ but

³⁵ International Court of Justice, “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,” 2004. Para. 87.

³⁶ Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge: Cambridge University Press, 2009), p. 49

³⁷ UN Security Council Resolution 479, 1981. See <http://unispal.un.org/UNISPAL.NSF/0/73D6B4C70D1A92B7852560DF0064F101>

³⁸ *Ibidem* p 36.

³⁹ N.F. Lancaster, ‘Occupation Law, Sovereignty, and Political Transformation: Should the Hague Regulations and the Fourth Geneva Convention Still Be Considered Customary International Law?’, (2006) 189 *Military Law Review*, p. 51. K. Cavanaugh, ‘The Israeli Military Court System in the West Bank and Gaza, 12(2) *Journal of Conflict and Security Law* (2007), pp. 197-222.

⁴⁰ *Ibidem* p 30.

⁴¹ A Cassese, ‘Powers and Duties of an Occupant in Relation to Land and Natural Resources’ in E Playfair (ed), *International Law and the Administration of the Occupied Territories* (Clarendon Press, Oxford, 1992), 420.

⁴² US Military Tribunal, Nuremberg. “The United States of America vs. Alfried Krupp, et al.” Judgment of June 30th 1948. 15 AD 620, Case No 214.

⁴³ *Ibidem* p 40. Pp 562.

⁴⁴ Harold Dichter, “The Legal Status of Israel’s Water Policies in the Occupied Territories.” 35 *Harv. Int’l L.J.* 1994. Pp 565

⁴⁵ Y. Dinstein. “The International Law of Belligerent Occupation and Human Rights”. 8 *Israel YbkHR* 104, 1978.

should rather be treated as immovable⁴⁶ Furthermore, in “N.V. De Bataafsche Petroleum Maatschappij and Others v. The War Damage Commission (1956)” the Court of Appeals in Singapore ruled that crude oil in the ground was immovable property.⁴⁷

- Article 55 of the Hague Regulations regulates immovable public properties during an occupation. It states that “the occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”⁴⁸ The concept of usufruct has its roots in the Roman law. The Institutes of Justinian defined usufruct as “the right of using and enjoying the property of other people, without detriment to the substance of the property”⁴⁹

- The International Military Tribunal at Nuremberg, in the Krupp case concerning the issue of wholesale economic exploitation of occupied territories during the Second World War held that “the Articles of the Hague Regulations ... are clear and unequivocal. Their essence is: if, as a result of war action, a belligerent occupies a territory of the adversary, he does not, thereby, acquire the right to dispose of property in that territory, except according to the strict rules laid down in the Regulations”.⁵⁰

- The obligation emanating from Article 55 is a passive as well as an active obligation. It is passive insofar as the expression “it must safeguard the capital” indicates preservation and therefore article 55 prohibit the capital itself to be gnawed and/or worn down and/or exhausted.⁵¹ This has a direct connection to the temporary nature of the situation of occupation, and it means that the occupying power “must guarantee that the use of the property remains in line with its status prior to the occupation.”⁵² On the other hand, the obligation is active since the occupying power has to protect the capital from any depreciation. In 2005 the International Court of Justice (ICJ) affirmed that Uganda, as the occupying power in the Ituri region in the Democratic Republic of Congo, had to take adequate measure to prevent that neither private persons nor army groups loot, plunder and exploit natural resources.⁵³ In this case the ICJ stated that Uganda had violated its duties of vigilance and had failed to comply with its obligations under Article 43 of the Hague Regulations as an occupying power.⁵⁴

- Article 55 imposes “the job of administrator on the occupier, where this job is limited – the job of the occupier-administrator is, in the words of the Article, usufructuary, operating in accordance with the rules of usufruct.”⁵⁵ The reference to capital and the expression "benefit" creates a legal

⁴⁶ Y. Arai.Takahashi. “The Law of Occupation. Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law”. Martinus Nijhoff Publishers. 2009. Chapter 8.

D. A. Graber, “The Development of the Law of Belligerent Occupation 1863-1914: A Historical Survey”. Columbia University Press, New York, 1949. Pp 170

E. R. Cummings, “Oil Resources in Occupied Arab Territories under the Law of Belligerent Occupation” 9 Journal of International Law and Economics, 1974. Pp 533, 563, 565.

⁴⁷ Singapore, Court of Appeal. N.V. De Bataafsche Petroleum Maatschappij and Others v. The War Damage Commission. April 13rd 1956. 23 ILR 810. At 822-824.

⁴⁸ Ibidem p 31.

⁴⁹ The Institutes of Justinian 2.4.

⁵⁰ Ibidem p 41. At 622.

⁵¹ High Court of Justice, Israel. Yesh Din – Volunteers for Human Rights, et. al. v. Commander of the IDF Forces in the West Bank, et. al.(26.12.11) 2164/09. Expert Legal Opinion At 18. See <http://yesh-din.org/userfiles/file/summary.pdf>

⁵² Al-Haq. “Pillage of the Dead Sea: Israel’s Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory”. 2012. P 14. See <http://www.alhaq.org/publications/publications-index/item/pillage-of-the-dead-sea-israel-s-unlawful-exploitation-of-natural-resources-in-the-occupied-palestinian-territory>

⁵³ Ibidem p 28.

⁵⁴ Ibidem p 28.

⁵⁵ Ibidem p 50. At 16.

distinction between use (permitted) of the fruits of the capital (use that preserves the capital itself), and use of the capital itself (prohibited).⁵⁶ However this prohibition is not absolute. The International Military Tribunal at Nuremberg considered that an occupying power may only take so much property, including natural resources, as is necessary to meet the cost of the occupation.⁵⁷ In the case of *N. V. Bataafsche Petroleum* already mentioned, the Court followed the Nuremberg jurisprudence stating that the drilling was not legal since it was not “just merely for the purpose of meeting the requirements of an army of occupation but for the purpose of supplying the naval, military and civilian needs of Japan, both at home and abroad.”⁵⁸

- Regarding the occupied Golan, there had never been exploitation of oil and gas before the occupation so Israel is prohibited to expand the activities and to develop plans that did not exist prior to the occupation.⁵⁹ If we take in consideration the argument about the cost of the occupation, the conclusion would be the same. Neither the first two times when Israel gave licences to exploit the oil and gas of the region nor when it granted the license to Genie Energy Ltd in 2013 did Israel base its decision in the purpose of meeting the cost of the occupation. Finally, the region has not showed a military resistance from the native inhabitants or from Syria in the last 40 years.⁶⁰

Pillage

- Under belligerent occupation, private and public property, including natural resources cannot be used by the occupying power beyond the limits imposed by the law of occupation. According to article 55 of the Hague Regulation, (immovable property), the occupying power has the role of administrator and usufructuary of State immovable property. In describing the occupying state as merely as an “administrator and usufructuary” the Hague Regulations establish the belief that the occupier does not become the lawful sovereign and cannot, therefore, destroy or exploit public immovable property because at some point that property will return to the occupied state.⁶¹ However, the right to impede the economic activity of the State by forms such as exploitation, seizures, and appropriations is legally limited to what is necessary for protecting the inhabitants of the occupied state and meeting the security and military needs for the occupation.⁶²

- The first prohibition of pillage was put into effect during the American civil war with the Lieber Code.⁶³ Pillage is identified as a war crime in the Report of the Commission on Responsibility set up after the First World War, as well as by the Charter of the International Military Tribunal (Nuremberg) established following the Second World War.⁶⁴ This prohibition has been enforced in several cases before national courts after the Second World War.⁶⁵

⁵⁶ Ibidem p 50. At 18.

⁵⁷ Ibidem p 38. P 580.

⁵⁸ Ibidem p 48. At 821.

⁵⁹ Ibidem p 51.

⁶⁰ Ibidem p 7.

⁶¹ Black's Law Dictionary, 619 (8th ed. 2004). The term exploit as defined by Black's Law Dictionary is “the act of taking unjust advantage of another for one's own benefit;” the exact behaviour prohibited by Hague IV.

⁶² Ibidem p 60. The military and security needs of the occupying force do not include offensive military action.

⁶³ Lieber Code of 1863.

⁶⁴ Report of the Commission on Responsibility set up after the First World War. At 475; International Military Tribunal (Nuremberg), Article 6(b).

⁶⁵ See, *China, War Crimes Military Tribunal of the Ministry of National Defence at Nanking, Takashi Sakai case.* France, Permanent Military Tribunal at Clermont-Ferrand, Szabados case. France, Permanent Military Tribunal at Dijon, Holstein case. France, Permanent Military Tribunal at Metz, Bauer case. Netherlands, Special Criminal Court at Hertogenbosch and Special Court of Cassation, Esau case. Netherlands, Special Criminal Court at The Hague, Fiebig case. United States, Military Tribunal at Nuremberg, Pohl case and Von Leeb (The High Command Trial) case.

- The pillage is regulated under the Hague Regulations⁶⁶ as well as the Fourth Geneva Convention⁶⁷. Both norms state that the occupying power is prohibited from ordering along with authorising the commission of pillage, and it is also obliged to prevent and stop pillage committed by private individuals.⁶⁸ Under the Statute of the International Criminal Court, “pillaging a town or place, even when taken by assault,” constitutes a war crime in international armed conflicts.⁶⁹

- The prohibition of pillage is also part of the customary international. It is a specific application of the general principle of law prohibiting theft. This prohibition is to be found in national criminal legislation around the world. Pillage is generally punishable under military law or general penal law.⁷⁰

- Article 33.2 of the Fourth Geneva Convention states that “pillage is prohibited.”⁷¹ In their Commentaries on the Conventions Articles, the International Red Cross notes that:

This prohibition is general in scope. It concerns not only pillage through individual acts without the consent of the military authorities, but also organized pillage, the effects of which are recounted in the histories of former wars, when the booty allocated to each soldier was considered as part of his pay. Paragraph 2 of Article 33 is extremely concise and clear; it leaves no loophole. The High Contracting Parties prohibit the ordering as well as the authorization of pillage. They pledge themselves furthermore to prevent or, if it has commenced, to stop individual pillage. Consequently, they must take all the necessary legislative steps. The prohibition of pillage is applicable to the territory of a Party to the conflict as well as to occupied territories. It guarantees all types of property, whether they belong to private persons or to communities or the State. On the other hand, it leaves intact the right of requisition or seizure.⁷²

- The International Military Tribunal at Nuremberg prosecuted several businessmen and government leaders for the pillage, spoliation, and exploitation of occupied territory.⁷³ In applying the Hague Regulations, the Nuremberg tribunals stated that “if, as a result of war action, a belligerent occupies territory of the adversary, he does not, thereby, acquire the right to dispose of property in that territory, except according to the strict rules laid down in the Regulations. The economy of the belligerently occupied territory is to be kept intact, except for the carefully defined permissions given to the occupying authority permissions which all refer to the army of occupation. Just as the inhabitants of the occupied territory must not be forced to help the enemy in waging the war against their own country or their own country's allies, so must the economic assets of the occupied territory not be used in such a manner.”⁷⁴

⁶⁶ Ibidem p 31. Article 47.

⁶⁷ Fourth Geneva Convention. Article 33(2).

⁶⁸ J. Pictet (ed), “Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War” ICRC, Geneva, 1958. Pp 226

J.M. Henckaerts and L Doswald-Beck, “Customary International Humanitarian Law - Volume I: Rules” ICRC and CUP, Cambridge- New York, 2009. Rule 52.

⁶⁹ ICC Statute, Article 8(2)(b)(xvi).

⁷⁰ International Committee of the Red Cross. “Customary International Humanitarian Law” Rule 52. See http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter16_rule52

⁷¹ Ibidem P 67.

⁷² International Committee of the Red Cross, Commentaries on Geneva Conventions, See <http://www.icrc.org/ihl.nsf/COM/380-600038?OpenDocument>

⁷³ US Military Tribunal at Nuremberg “United States of America v A. Krupp et al.” July 31st 1948. US Military Tribunal at Nuremberg. “United States of America v C. Krauch at al., (I. G. Farben case)” July 29th 1948.

⁷⁴ Ibidem p 41.

- The ICTY also ruled on the prohibition of pillage. In the Delalic case the Trial Chambers described the scope of this prohibition saying that “it is to be observed that the prohibition against the unjustified appropriation of public and private enemy property is general in scope, and extends both to acts of looting committed by individual soldiers for their private gain, and to the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory.”⁷⁵ Furthermore, the ICTY stated that “international humanitarian law not only proscribes certain conduct harmful to the human person, but also contains rules aimed at protecting property rights in times of armed conflict. Thus, whereas historically enemy property was subject to arbitrary appropriation during war, international law today imposes strict limitations on the measures, which a party to an armed conflict may lawfully take in relation to the private and public property of an opposing party.”⁷⁶ Finally, the court noted that in order for a charge to be “serious” under the ICTY’s statutes it must meet two elements, “first, the alleged offense must be one which constitutes a breach of a rule protecting important values. Secondly, it must also be one which involves grave consequences for the victim.”⁷⁷

- As already pointed out, the 2005 ICJ decision between in the Democratic Republic of the Congo and Uganda also solidified the prohibition of pillage.⁷⁸ The ICJ held Uganda liable for the members of its military exploitation of natural resources by members of its military while occupying parts of the DRC insofar as “whenever members of the UPDF [the Ugandan military] were involved in the looting, plundering and exploitation of natural resources in the territory of the DRC, they acted in violation of the jus in bello, which prohibits the commission of such acts by a foreign army in the territory where it is present. The Court notes in this regard that both Article 47 of Hague IV and Article 33 of Geneva IV prohibit pillage.”⁷⁹

- In the context of natural resource pillage, property is appropriated when the perpetrator, by means of extraction, exports and sale, takes possession of the resources.⁸⁰ In the case of oil and natural gas of Syrian Golan the licence granted to Genie Energy Ltd is for exploration as well as for exploitation of oil and natural gas in half of the occupied territory.⁸¹

- Individuals can also be considered responsible for the commission of pillage. In the Prosecutor v Jean-Paul Akayesu case, the International Criminal Tribunal for Rwanda declared that private entities or individuals may violate international humanitarian law even if their conduct is not attributable to the State.⁸² The International Military Tribunal at Nuremberg interpreted the requirement of a nexus to the armed conflict in the same way, only demanding the existence of a link between the act and the armed conflict in itself, not between the perpetrator and a party to the conflict.⁸³ Therefore not only is Israel responsible of the commission of pillage but also Genie Energy Ltd is.

⁷⁵ International Criminal Tribunal for the Former Yugoslavia. Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo. IT-96-21-T November 16th 1998. See http://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf

⁷⁶ Ibidem p 75.

⁷⁷ Ibidem p 75.

⁷⁸ Ibidem p 28.

⁷⁹ Ibidem p 28.

⁸⁰ M. A. Lundberg, “The Plunder of Natural Resources during War: a War Crime (?)” 39 Georgetown Journal of International Law, 2009. Pp 509.

⁸¹ Ibidem p 18.

⁸² International Criminal Tribunal for Rwanda. Prosecutor v Jean-Paul Akayesu. ICTR-96-4. June 1st 2001. At 432-445.

⁸³ US Military Tribunal at Nuremberg “United States of America v A. Krupp et al.” July 31st 1948.
US Military Tribunal at Nuremberg. “United States of America v C. Krauch at al., (I. G. Farben case)” July 29th 1948.
US Military Tribunal at Nuremberg. “United States of America v F. Flick at al.” April 14th 1949.

Conclusion and recommendations

- The Golan has been an occupied territory since 1967 and this did not change with the illegal annexation made by Israel in 1981. Therefore, the application of Israeli national laws is null and void insofar as the law applicable to the occupied Golan is the law of occupation.
- As occupying power, Israel has the legal obligation to act as administrator of public property and natural resources. This obligation is regulated by Article 55 of the Hague Regulations and means that Israel has to preserve the capital. In other words, article 55 prohibits the capital itself to be gnawed and/or worn down and/or exhausted.
- Before the occupation, there was no exploitation of oil or natural gas. The first time that plans about it drilling appeared was in the early 1990's when Israel granted the first licence. Israel also tried to exploit the oil and natural gas of the Golan in 1996. However in both times Israel had to withdraw its decision because of international pressure.
- The decision to grant the licence and the drilling itself constituted a violation of the prohibition of pillage regulated in the Hague Regulations as well as in the Fourth Geneva Convention. Both these treaties are binding in Israel. According to the international jurisdiction not only is Israel responsible but also Genie Energy Ltd is. Therefore, Israel authorities along with Genie Energy Ltd have to stop the exploitation of oil and natural gas in the Syrian Golan inasmuch as it constitutes a violation of international humanitarian law.
- The timing of the Israeli decision is strongly connected to the situation in Syria and has no purpose of meeting the cost of the occupation. In this sense, the exploitation is illegal and the International Community must force Israel to stop its plans one more time. This included individual States and also International Organizations such as the United Nations, the European Union and the League of Arab States.
- The International community has to take concrete measures to pressure Israel to halt its violations of international humanitarian law. It also has the duty to ensure that Israel's violations of international law do not remain unpunished.
- The European Union in particular has to act in accordance with its own guidelines on promotion compliance with international humanitarian law.